IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Hari Kishan. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.1382/2006
against the order dated 30-8-2006 passed
by the Additional Sessions Judge No.3,
Jodhpur, in Criminal Revision No.59/2004.

...

Date of Order: November 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Trivedi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Sandeep Mehta, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 30-8-2006 passed by the Additional Sessions Judge No.3, Jodhpur (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by non-petitioner No.2 against the order dated 20-9-2004 passed by the Judicial Magistrate No.3, Jodhpur (for short, "the trial Court" hereinafter) was allowed and while setting aside the order of the trial Court dated 20-9-2004, the matter was remanded to the trial Court to decide the

applications filed by the parties under Section 457 of the Code afresh after hearing both the parties.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

On an FIR lodged by the non-petitioner No.2, being FIR No.146/2004, Police Station, Udai Mandir, Jodhpur against the petitioner, the police investigated the matter and during investigation seized certain articles generally belonging to ladies like Sari, Blouses, Peticot etc. and certain books of the children. Both the parties filed applications under Section 457 of the Code seeking interim custody of those articles. The trial Court dismissed the application filed by the non-petitioner No.2; however allowed the application filed by the petitioner and directed to give interim custody of the articles to the petitioner solely on the ground that as the same were recovered from the petitioner and, therefore, the petitioner is entitled to possess those articles. That order of the trial Court was challenged and the Revisional Court, noticing the fact that most of the articles are for the use of ladies like Sari, blouses etc. and as there are certain books and school certificates of the children, therefore, the Revisional Court observed that the findings of the trial Court are erroneous and consequently set aside the order of the trial Court and remanded the matter to the trial Court. In my view,

the order of the Revisional Court remanding the matter to the trial Court, cannot be said to amount abuse of process of the Court, nor can it be said that the order impugned would result in serious miscarriage of justice.

The criminal miscellaneous petition is, therefore, dismissed. Let the trial Court pass a fresh order in accordance with law.

(H.R. PANWAR), J.

mcs